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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,790	07/14/2003	Richard J. Dibbs	DST-10503/15	7314
25006	7590	01/18/2006	EXAMINER	
GIFFORD, KRASS, GROH, SPRINKLE & CITKOWSKI, P.C PO BOX 7021 TROY, MI 48007-7021			WEIER, ANTHONY J	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 01/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/618,790

Applicant(s)

DIBBS, RICHARD J.

Examiner

Anthony Weier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 and 62-73 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 and 62-73 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-37 and 62-73 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In particular, the original specification does not appear to support employing a first quantity of energy applied to a yolk and then a second quantity of microwave energy which is separately imparted to the albumen of the egg. More specifically, this recitation appears to call for equipment treating the albumen portion of the in-shell egg with microwave energy to the exclusion of imparting such energy to the yolk, even incidentally. The use of the words "separately being imparted" does not follow the original support for equipment that imparts two separate microwave treatment steps each directed to treatment of different parts of the egg but that do not exclude treatment which may occur to other parts or the egg.

2. Claims 1-37 and 62-73 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in

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the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The instant specification is not enabling for demonstrating the apparatus therein may be used to microwave heat the yolk of an egg and then separately microwave the albumen. The word "separately" is taken to mean that this second microwave heating is achieved to the exclusion of heating the yolk.

Claim Rejections - 35 USC § 103

3. Claims 1, 2, 11-22, and 62-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/02751.

The claims stand rejected for the reasons set forth in the last Office Action.

4. Claims 3, 23, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/02751 taken together with Neiderer et al.

The claims stand rejected for the reasons set forth in the last Office Action.

5. Claims 4, 5, 26, 27, and 29-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied in paragraphs 2 or 3 taken together with JP 2000-14269.

The claims stand rejected for the reasons set forth in the last Office Action.

6. Claims 6-8 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied in paragraphs 2 or 3 taken together with Van der Schoot (U.S. Patent No. 4872564).

The claims stand rejected for the reasons set forth in the last Office Action.

7. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/02751 taken together with Anshutz.

The claims stand rejected for the reasons set forth in the last Office Action.

Response to Arguments

8. Applicant's arguments filed 10/31/05 have been fully considered but they are not persuasive.

Applicant argues that Purdue fails to teach or suggest any form of targeted application of microwave energy. It should be noted, however, that the instant claims are all apparatus claims. The prior art need not show the actual targeting strategy as Applicant argues, but merely have the ability to be able to carry out such steps. Certainly, the microwave component of the Purdue reference has the ability to change time and energy constraints and would reasonably be expected to be able to perform the particular strategy steps set forth in the instant claims. Moreover, it should be noted that the apparatus of Purdue has the ability to pasteurize the egg by using the microwave component as well as the heat exchanger means. It should be further noted that the instant claims do not restrict the pasteurizing to occur using only the microwave system. On the contrary, instant claim 1 employs open language (i.e. comprising) wherein other additional heating components may be present in facilitating the pasteurization of the in-shell egg pasteurization system. Nevertheless, Purdue further discloses pasteurizing egg using only microwave heating means (e.g. claim 9 in Purdue).

Applicant argues that the secondary references are unrelated to microwave pasteurization. However, such references were not applied alone for their teachings

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regarding microwave pasteurization, but as added references to the primary to show the known use of the claimed devices employed in conjunction with the pasteurizing of the egg. It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed such devices as egg treatment/analysis apparatus regardless of the device used for pasteurizing the eggs.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action in view of the significantly altered claim language, particularly newly recited limitations regarding the packaging arrangement and order of opening same. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization

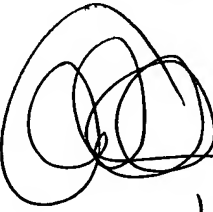
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where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier
January 11, 2006

Anthony Weier
Primary Examiner
Art Unit 1761


1/11/06